



**29 AUG 2007**

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In re Application of  
AMISAR et al.  
Application No.: 10/591,862  
Int. Application No.: PCT/IL05/00250  
Int. Filing Date: 03 March 2005  
Priority Date: 04 March 2004  
Attorney Docket No.: 2116  
For: LIQUID FLOW MONITORING APPARATUS

**DECISION ON PETITION  
UNDER  
37 CFR 1.137(a)**

This decision is issued in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)" filed in the United States Patent and Trademark Office on 01 July 2007.

**BACKGROUND**

On 03 March 2005, applicant filed international application PCT/IL05/00250 which claimed a priority date of 04 March 2004. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 15 September 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 September 2006.

On 04 September 2006, applicant filed via facsimile a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371, which was accompanied by, inter alia: a credit card payment form (PTO-2038) authorizing the payment of \$300 for the basic national fee; a copy of the international application; a declaration of inventorship; and a preliminary amendment. The credit card payment was declined by the credit card company.

On 21 May 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT UNDER 35 U.S.C. 371 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to provide the U.S. Basic National Fee by 30 months from the priority date (37 CFR 1.495(b)(2)). Further, the Notification of Abandonment should have noted that the submission of the basic national fee via facsimile was not acceptable under 37 CFR 1.6(d).

On 01 July 2007, applicant filed "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)."

### **DECISION**

A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the requisite petition fee; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 1.20(d)) required pursuant to 37 CFR 1.137(c). Applicant has satisfied Item (1) and (2). Item (4) is not applicable.

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, because the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 15 September 2005, a copy of the international application is not required. The "required reply" is therefore a payment of the basic national fee. The Petition For Revival filed on 01 July 2007 was accompanied by a payment of the basic national fee. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 04 September 2006. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

As to Item (2), the appropriate petition fee of \$250.00 has been submitted.

With regards to item (3), applicant has not provided an acceptable showing that the delay was unavoidable. Applicant argues in their petition that the failure to timely submit the basic national fee was unavoidable due to "the use of an incorrect credit card account number, resulting in non-payment of the filing due on September 4, 2006." However, the actions taken in the prosecution of this case do not reflect unavoidable delay. Specifically, unavoidable delay is present only where petitioner and those acting for petitioner take all actions necessary to continue the prosecution of an application, but through the intervention of unforeseen circumstances, a required action is not timely taken. The actions and circumstances described in the petition, however, do not reflect the "care or diligence that is generally used and observed by prudent and careful men in relation to their most important business." Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

A petition to revive an application under 37 CFR 1.137(a) cannot be granted where a petitioner has failed to meet his burden of establishing unavoidable delay within the

meaning of 37 CFR 1.137(a) and 35 U.S.C. 133. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987). Therefore, since applicant has not satisfied item (3) above, the granting of the petition under 37 CFR 1.137(a) for revival based on unavoidable delay would not be proper.

It is noted that applicant submitted the basic national fee by facsimile on 04 September 2006. Facsimile transmission is not acceptable for submission of the basic national fee and/or copy of the international application. See 37 CFR 1.6(d). Therefore, even if applicant's credit card had been accepted or the delay was considered unavoidable, the application would still have been abandoned in accordance with 37 CFR 1.6(d) and 37 CFR 1.495(b).

### **RECOMMENDATION**


Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived. Any petition filed under 37 CFR 1.137(b) requesting that the application be revived must meet the criteria indicated 37 CFR 1.137.

### **CONCLUSION**

The petition under 37 CFR 1.137(a) is **DISMISSED** without prejudice and the above-identified national stage application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137 (a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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